1951.

File No. S. Bel. 15/51

Legal DEPARTMENT
E BRANCH

Subject:— Suits Belgaum

In the Court of the Civil Judge (S.D.) Belgaum
Civil Suit no. 33 of 1949

Shri C.R. Deshpande and two others -- Plffs
vs
The State of Bombay and others -- Defts

Re: For possession of suit property
past, present and future mesne

New No. 481 of 1957

P-15
E

File No. S. Bel 15/51

Bld. Scotch. Slip 16-B

CONTENTS.

Legal Department File No. S. Bd. 15/31.

Sr. No.	Compilation No.	Subject	Pages.

Suits Belgaum.

C. S. No 33 of 1949

Shri C. R. Deshpande and 2 others

Vs.

State of Bombay and others.

For possession of suit property with past and present future mesne profits.

1-30

Translation of the Plaint at page 5 and 7 of file No.II

Asal No.10/1944. Sp.U.G.No.33/1949.

In the Court of the District Judge Sangli.

Plaintiffs.

1. Chidambar Ramachandra Deshpande and two others of Belgaum.

Defendents.

Bombay Province and others.

Suit on account of court expence: Rs.2744-9-0.

Discription of the Property:-

Tumarguddi:

(a) His request is that the amount recovered from out of the L.R. from the village the plaintiff is to receive Rs.54-9-0 per year. This has been fixed at the Rev.Settlement, but recently the rates have been increased on account of Revision Settlement. But definite share is not fixed. So if required the excess court fee will be creditted.

The details of the Inam S.Nos.are as under:-

R.S.Nos.	Area.	Assessment.
31.	6/22.	9-0-0.
32.	7/5.	8-0-0.
33.	7/24.	9-0-0.
34.	2/22.	2-8-0.
44.	3/22.	4-0-0.
45.	8/32.	10-0-0.
6.	36/7.	42-8-0.

As these lands are service Inam lands useful to Govt.the total amount is payable to Govt.including Judi is Rs.30-8-0.

2. These lands were mortgaged by Shri.Ramachandra Konher and Narasinh Konher Deshpande for Rs.18,000/- in 1886 to the Chief Saheb of Sangli. The management of the property was managed by the Rev.Officers of the Tal.Concerned.

3. In the year 1932,the above mentioned lands were received back as the amt.was fully paid to the Chief Rajesaheb as ordered by the then Divan Saheb.

4. Though the plaintff requested to hand over the possess--ion of the property by putting many applications to the Divansaheb,the Divansaheb ordered to get his rights proved by the Civil Court on 19-9-1942.

5. It is the duty of the Loney Lender to handover the possession of the property after recovering the full payment of the mortgaged property. But unnecessarily postponed on account of false complaints made by the Dft. No.2. That is why this suit is filed. This suit was to be filed on account of the order passed by the Divansaheb on 19-9-42, for the yearly income from the year 1932.

6. The de-tails of the suit are as under:-

Rs.	545-10-0.	This is ten times of the year income of Rs.54-9-0;
Rs.	318-12-0.	This is seven times than that of the assess-ment of the lands;
Rs.	180- 0-0.	Fifteen times of "Nafa".
Rs.1,700-	3-0.	Yearly income from 1932,at Rs.54-9-0. (Rs.54-9-0 X 11 = 1,700-3-0).

Total: Rs.2,744-9-0. On this amount court fee stamp is paid.

7. Sangli state being a party the State has the authority

authority. . . . .
to conduct the case. As the Sangli Chief is the Money Lender, so it is neces-sary that the state should be party. Deft. No.2 is the tenant of Def.No.1. accordingly he has given a Kabulayat to Deft. I re--quested Deft.No.1 to give Kabja of the lands for which he made false complaints and so he is made party in the suit. The Deft.No.3 and 4 have also been made as party,so that they should not make any complaints at the time of execution.

9. Notice is given to the State under sect.80 of C.P.C. on 11-9-1943 being a party.

10. Ramachandra and Narasinh Konher have been ex--pired the Plfftt. No.1 and 2 are the heirs. Pltff. No.1 and 2 have got their lands released as their shares from Shriyts Virupax Chintaman and Keshav Konher. That is why the Pltff. No.1 and 2 are the owners. Pltff. has brought this suit because pltff. No.1 and 2 and Keshav Konher have purchased the lands from Pltff.No.3, belonging to him as mentioned in para 1 which are Naiki lands.

11. The pltff.has requested as under:-

1. He should get the possession of the above mentioned lands and annual income.

2. He should also get the yearly income of Rs.1700-3-0 for 11 years.

3. He should also get the further annual income.
4. He should get the suit expense.
5. He should get the proper justice.
6. He should be allowed to make necessary changes in the plaint if required.

In this order may kindly be passed.

473

Belgaum Civil Suit No.32 of 1949.

This is a suit for possession of suit properties with past and future mesne profits. The suit was originally filed in the District Court, Sangli in 1944. The written statement on behalf of the Sangli State was already filed (p.41 of the file No.1). Due to merger the State of Bombay was made a party to the suit.

Nothing can be said on the merits as the record of the case is not available. However, the suit is defensible on technical grounds.

The defence of the suit may be sanctioned on the lines of the accompanying brief.

MAP/-

12.9

A.S.R:- Pl write to the Collr stating that the relevant documents namely mortgage deeds, the partition deed & the order releasing the proceeds after satisfaction of the mortgage are absolutely necessary for the defence of the suit & they should be traced & forwarded to D.L.R. at a very early date.

B.K. 13/9

Shri Inamdar.

5

Belgaum Civil Suit No.33/49.

1. This is a suit for possession of suit properties and the annual income thereof with arrears.

2. The suit is defensible.

3. The defence of the same may be sanctioned on the lines of the accompanying brief.

1117

Solicitor (M.D.)

The whole being has been
recast in the light
of the directions issued
orally.

218

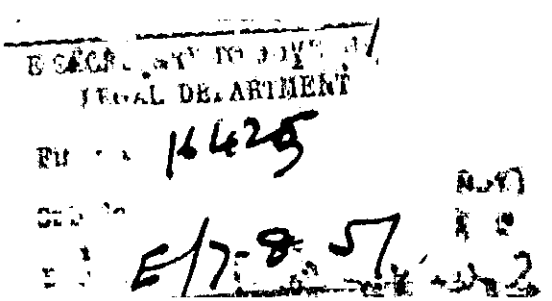
Solicitor (Retd.) 3/8/51

Secy. R.D. 8/6/18

× No. 12598
dt 6-8-51.

REVENUE DEPARTMENT,
SECRETARIAT, BOMBAY.

06 AUG 1951



Suit No. 33 of 1949 47

In the Court of Civil Judge, S.Dn., at Belgaum.

1. Chidambar Ramchandra Deshapande & others ... .. Plffs

Vs.

1. Province of Bombay and others. ... ... Defts.

Herein the Written Statement of Deft No. is as follows:-

1. Plff's suit is misconceived and untenable. The same is denied in toto by the Defendant.

2. The allegations made in para 2 of the plaint are denied. The Naikki lands and the village Tummarguddi were not divided by metes and bounds between several shares of the plaintiffls and defendant No.2's branch. The income of these suit Naiki lands was only enjoyed by these branches prorata as per share. The plaintiff's predecessors-in-title, did not mortgage the suit Naikim lands but the income of Rs. 54-9-0 recoverable from these lands by them in respect of their share, was only mortgaged. The suit Naiki Inam -- lands at Tummarguddi, had never been in possession of the Sangli State as mortgagee but the state was receiving, in lieu of the interest of the mortgage debt, only the income of Rs. 54-9-0 recoverable receivable from the Naiki Inam lands of Tummarguddi.

3. After the mortgage of 1886 in question, Harihar -Rao (father of Deft No.2) who obtained a decree in Civil Suit No. 1 of 1218 Fasli against the Konher Branch for - partition and possession, the joint family properties and who secured a ~~x~~1/2 share in the Tummarguddi village and the Naiki Inam lands, got the seven shares of the Konher Branch in the other half/of the share Tummarguddi village and the Naiki Inam ~~village~~ lands of that village in the partition arrangements arrived at in 1892 between the two branches , Nagnath and Konher. The said HariharaRao thus ~~became~~ became the full owner of

P.T.O.

the Tummarguddi village and the Naiki Inam lands at Tummarguddi. The plff's right title and interest in these Naiki Inam lands and their income did not survive thereafter. After the discharge of the mortgage debt, the State stopped recovery or receiving the annual income of the said Naiki lands from Deft No.2. The plffs are estopped from claiming any title to the income of these Naiki Inam lands. The plaintiffs have therefore no title to demand either possession of, or income of the previous arrears thereof from, these Naiki Inam lands from the Sangli State or from the Defendant. Hence the present suit is not maintainable.

4. The allegations made in para 7 of the plaint, are denied. Deft No. 2 was never the tenant of Deft No.1. The document alleged to be a Kabulayat was not a kabulayat at all. As a matter of fact, after the partition arrangement of 1892 referred to above between the two branches of - Naganath and Konher, the title of Deft No.2 to the whole of the village Tummarguddi, including the suit lands, became perfect. But as the income of Tummarguddi village, in respect of the share of plff Nos. 1 and 2 happened to be in the possession of the mortgagee, Deft No. 2's ancestor had to pass an agreement acknowledging his liability to pay Rs. 54-9-0 per year to the Sangli State towerds the liquidation of the mortgage debt. Thus after 1892 the plffs or their ancestors could not claim any title to the suit property. The plffs have impleaded Deft No.1 in the suit by putting forth a lame contention of tenancy.

5. Neither Virupax, Chidamber or Annagi or Keshav could lay any claim to the suit properties after 1892. They or any of them could not therefore convey any title to plff No.3 in respect of the suit properties under the release deed or the sale deed as alleged in the plaint.

c/49

6. The order of the Sangli Diwan releasing the properi -ty on satisfaction of the mortgage debt, was passed in 1932. The present suit is not filed within 12 years from the date of the said order. The suit for possession is therefore barred by limitation.

7. Assuming without admitting that the plffs had a cause of action against the Sangli State, the -- successor -Government, namely Deft No.1 , cannot be sued for the illegal acts if any committed by the former State. Defendant No.1 is not in possession or enjoyment of the suit lands. The plffs have no right to bring this suit - against the successor of the Sangli State for possession and mesne profits unless under the agreement of merger - between the Sangli State and the Deft Provincial Government the state's liability for such illegal acts has been -- undertaken by this Government. No such liability is under- -taken by this Government.

For these reasons it is submitted that the suit be dismissed with costs.

Dist.Govt.Pleader,Belgaum.

I, B.V.Jakati, District Government Pleader,Belgaum do hereby solemnly state that what is stated in the above paragraphs from 1 to 7 is true to the best of the informa- -tion and instructions. This verification is made at - Belgaum, on the of 1951.

Belgaum.
Date:-

District Government Pleader,
Belgaum.

5+
11

No. 13732
Office of the
Remembrancer of Legal Affairs,
Bombay Castle (Bombay No.1), 17th Aug 1951.
27

Subject :- Civil Suit No. 33 of 1949 and 33 of 1950

Memorandum:

With reference to his letter No. J. 238 dated the 17th August 1951 forwarding a draft written statement in the suit No 33 of 1949 noted above for approval, the District Government Pleader, Belgaum is informed that two copies of the ~~revised~~ approved draft are forwarded herewith.

× With reference to his letter No. J. 230 dated the 8th August 1951, the Dist. Govt. Pleader is informed that early steps are being taken to sanction the defence in CS 33/12 (Belgaum)

OC
For Remembrancer of Legal Affairs

27.8

To

The District Government Pleader,
Belgaum.

Submitted for Signature
NB
- 27/8

HSP/4/7

A.Sofo(M)

27

GR LD No 13834 Dated the 28th August 1917

Sent to press on 30/8/17

30/8.

Suits :

Belgaum.

For possession of suit property with past and present future mesne profits.

GOVERNMENT OF BOMBAY.

LEGAL DEPARTMENT.

Resolution No. 13834.

Bombay Castle, 28th August 1951.

Letter from the Collector of Belgaum, No. LAW. 870, dated the 11th July 1950—Forwarding the papers in the suit noted in the margin and requesting sanction to its defence.

IN THE COURT OF THE CIVIL JUDGE (SENIOR DIVISION), BELGAUM.

CIVIL SUIT No. 33 OF 1949.

Shri C. R. Deshpande and two others ... ... Plaintiffs ;

versus

The State of Bombay and others ... ... Defendants.

Memorandum to the District Government Pleader, Belgaum, No. 12849, dated the 10th August 1951—Forwarding a copy of the brief with its accompaniments in advance.

RESOLUTION.—Sanction is accorded to the defence of the suit on the lines of the accompanying brief.

By order of the Governor of Bombay,

J. R. DHURANDHAR,
Secretary to Government.

L Leg. H 156—1

[P.T.O.

To.

*The Revenue Department,
*The Collector of Belgaum,
The District Government Pleader, Belgaum (with two copies of the brief).

*With a copy of the brief.

No. of 1951.

Copy forwarded for information and guidance to

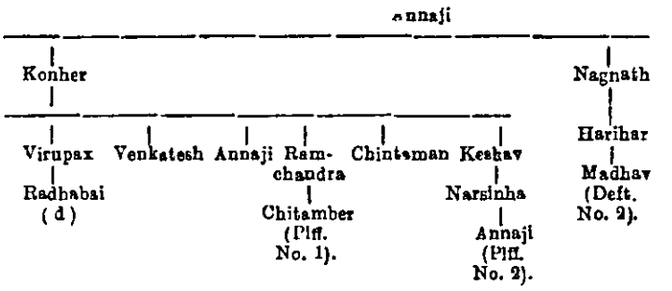
54
15

BELGAUM CIVIL SUIT No. 33 OF 1949.

Chronological Statement of Facts.

This is a suit by the plaintiffs against the Sangli State and three others, for possession of the suit properties and the annual income thereof with arrears for eleven years, to the extent of Rs. 1,700 and certain annas.

2. The relevant geneology of the parties is as under :—



Chitambar and Annaji, plaintiffs Nos. 1 and 2 are from Konher Branch, while Madhav, defendant No. 2 is from the Naganath Branch.

3. In 1871 or thereabout Nagnath filed a Civil Suit No. 1 of 1281 (fasli) in the Court of Nyayadhish (Sangli) for partition and possession of one-half share in the joint family property. Pending this suit, in 1879, representatives of Konher Branch partitioned, *inter se*, the joint family properties, undertaking to part with the respective share of Nagnath in properties in their possession as and when the pending suit was decided. The plaintiff's suit was decreed in 1882 in his favour.

4. In 1886, Ramchandra Konher and Narsinha Konher (the ancestors of the plaintiffs Nos. 1 and 2) borrowed a sum of Rs. 18,000 by mortgaging with possession certain properties and the annual income of Rs. 54-9-0 from the suit lands, which were Naiki Inam lands situate at Tumurguddi.

5. It appears from the order of the Diwan of Sangli, dated 19th February 1942, that Hariharrao (father of defendant No. 2) had a half share in the income of the Tumurguddi lands including the Naiki Inam lands. The other half was sub-divided into seven shares amongst the representatives of Konher Branch. In the partition arrangement arrived at in 1892, between the two Branches, these seven shares of the Konher Branch in the half share of Tumurguddi village along with the income of the suit lands, and other properties were given over to Hariharrao. However, as the income from the suit Naiki lands was being recovered by the mortgagee, the plaintiff was compensated for the loss of the mesne profits by granting two more lands to him from other villages.

6. In 1894, a fresh loan of Rs. 25,000 was taken by Ramchandra and Narsinha, on the security of the same properties. In 1920, another loan of Rs. 9,000 was taken by these persons on the strength of the self-same properties. The loan accounts were worked out and adjusted in 1932. The debt was then declared satisfied and the mortgaged property was ordered to be released.

7. It seems from the Diwan's order that in 1895 or thereabouts, Hariharrao after the completion of his title to the income of the land in Tumurguddi, passed an agreement in favour of the Ruler undertaking to pay Rs. 30 plus Rs. 54-9-0 as a mortgagee in possession till the liquidation of the mortgage debt.

8. On 21st July 1932, the Diwan of Sangli issued an order to the Mamlatdar, Shahapur, to hand over the mortgaged lands to Chitambar Ramchandra and others, and on 25th November 1933, a receipt was passed by Chitambar Ramchandra acknowledging delivery of mortgaged properties excepting income of lands at Tumurguddi. In the meantime, on 21st February 1933 or thereabouts Madhavrao, defendant No. 2, applied to the Diwan of Sangli for return of mortgaged properties. The annual recovery of Rs. 54-9-0 from defendant was then stopped.

9. On 20th June 1939, Virupax Deshpande passed a release deed of his share in some properties including the Tumurguddi Naiki lands to Keshav, Chitambar and Annaji.

10. On 30th January 1942, Keshav, Chitambar and Annaji submitted an application to the President, State Executive Council. This application was referred back to the Diwan for disposal. Both the parties were heard by the Diwan of Sangli and he dismissed the application as the question, involved, was within the sphere of Civil Court, on 19th September 1942. That order refers to the history of the case in detail.

11. On 31st March 1942, plaintiffs Nos. 1 and 2 passed a sale deed of their share in the suit properties to Narayan Devrao Deshpande.

12. On 11th September 1942, plaintiff gave notice of suit under section 80 of the Civil Procedure Code to the Diwan and Chief Revenue Officer of Sangli State and in 1944, plaintiffs filed the present suit in the Court of the District Judge, Sangli. After merger of Sangli State, the suit is transferred to the file of Civil Judge, Senior Division, Belgaum.

Grounds of Defence.

1. The main contention of the plaintiffs is that the mortgaged Tumurguddi Naiki lands were not restored to the plaintiff mortgagors by the Sangli State even though the mortgage debt was satisfied. The Naiki lands and the village Tumurguddi were not divided by metes and bounds between several shares of the plaintiff's and defendant No. 2's branch. The income of these Naiki lands was only enjoyed by these branches *pro rata* as per share. The plaintiff's predecessors-in-title, did not, as contended by the plaintiffs, mortgage the Naiki lands but the income of Rs. 54-9-0 recoverable from these lands by them in respect of their share was only mortgaged. It should, therefore, be contended that the Naiki Inam lands at Tumurguddi had never been in possession of the Sangli State as mortgagee but the State was receiving, in lieu of interest of the mortgage debt only the income of Rs. 54-9-0 receivable from the Naiki Inam lands at Tumurguddi.

2. Second contention of the plaintiffs is that they are entitled to get back the Tumurguddi Naiki Inam lands from the Sangli State as their debt has already

61
17

been discharged. It is evident from paragraph 1 of the Grounds of Defence that only income from the Naiki Inam lands at Tumurguddi receivable by the plaintiffs in respect of their share was mortgaged to the State. After the execution of the first mortgage in 1886, Hariharrao, who obtained a decree in Civil Suit No. 1 of 1218 (Fasali) against the Konher Branch for partition and possession of the joint family properties and who secured a half share in the Tumurguddi village and the Naiki lands got the seven shares of the Konher branch in the other half share of the Tumurguddi village and the Naiki Inam lands at Tumurguddi, in the partition arrangement arrived at in 1892 between the two branches, Naganath and Konher. Hariharrao thus became the full owner of the Tumurguddi Village and the Naiki Inam lands at Tumurguddi. The plaintiffs' right, title and interest in these Naiki Inam lands and their income, did not survive thereafter. The State as mortgagee received the income of these lands up to the date of satisfaction of the mortgage debt and stopped its annual recovery from defendant No. 2 after the discharge of the debt. The plaintiffs are estopped from claiming any title to the income of these Naiki Inam lands. The plaintiffs have, therefore, no title now to demand either possession of, or income of the previous arrears thereof from these Naiki Inam lands from the Sangli State. The present suit is not maintainable.

3. It is contended by the plaintiffs in paragraph 7 of the plaint that defendant No. 2 was the tenant of defendant No. 1 in respect of suit properties. The contention should be specifically denied. As a matter of fact, after the arrangement of 1892 between the two branches, defendant No. 2's title to the whole of village Tumurguddi including the suit lands became perfect. But as the income from the suit lands and income of Tumurguddi village in respect of the plaintiffs Nos. 1 and 2's share happened to be in the possession of the mortgagee, defendant No. 2's ancestor Madhavrao, had to pass an agreement acknowledging his liability to pay Rs. 54-9-0 per year to the State towards the liquidation of the mortgage debt. The document of 1896 was not a Kabulayat. Defendant No. 2 was never the tenant of defendant No. 1. After 1892, the plaintiffs or their ancestors could not claim any title to the suit properties. Plaintiffs have put forth a lame contention of tenancy to unnecessarily implead defendant No. 1 in the suit.

4. Neither Virupax, Chitambar or Annaji could lay any claim to the suit properties after 1892. So, Virupax or Chitambar or Annaji could not convey any title in respect of suit properties to plaintiff No. 3 under the release deed of 1939 or the sale deed of 1942.

5. It should be contended that the suit is barred by limitation. The order releasing the property on satisfaction of the mortgage debt was passed in 1932. The plaintiffs have not filed this suit within twelve years from the date of the order. The suit for possession is, therefore, barred by limitation.

6. Assuming that the plaintiffs had a cause of action against the State of Sangli it can still be contended that the successor Government cannot be sued for the illegal acts, if any, committed by the former State. Defendant No. 1 is not in possession

or enjoyment of the suit lands. It is an established principle that upon a cession of territory an inhabitant of a ceded territory can make good in the Municipal Courts established by the new sovereign only such rights as that new sovereign has recognized and not the rights enjoyed under the rule of his predecessors (*vide Vajesingji* v. *Secretary of State* 26 Bom. L.R. 1143, *Sayad Asrar Ahmed* v. *Darga Committee of Ajmer* 49 Bom. L. R. p. 235.) The plaintiffs, therefore, have no right to bring this action against the successor of the Sangli State for possession and mesne profits unless under the agreement of merger between the Sangli State and the Provincial Government the State's liability for such illegal acts has been undertaken by this Government. No such liability is undertaken by this Government.

For these reasons it should be contended that the suit fails and should be dismissed with costs.

S Bed 15/57
2772-57

15/57

1953

C.S.No. 481/51.

No.J- 510 of 1953.
Office of the Dist.Govt.Pleader
Belgaum. Dated:- 1-10-1953.

From

Shri M.R.Patil, B.A.,LL.B.,
District Government Pleader, Belgaum.

To

The Collector, Belgaum.

Subject:- C.S.No.481/51..
1. Chidambar Ramchandra Deshpande - Plff.
Vs.
1. The State of Bombay.. Deft.

5 - OCT 1953

Sir,

I have the honour to state that the above mentioned suit is decided on 30-9-1953. The order of the Court runs as under:-

" Suit is dismissed. Plffs do pay costs of the suit to defts Nos.1 and 2 in separate sets and do bear their own costs of the suit."

27887
6/10/53

The copy of the judgment follows.

Copy F.W.Cs to:
The Remembrancer of Legal Affairs,
Bombay.

Yours faithfully
M R Patil
Dist.Govt.Pleader, Bgm.

Submitted

CS No 33/49 (481 of 51)

is decided in favour of Suit-

Result may be recorded

after the receipt of copy & report.

Till then file may be filed in

S. Bel. 15/51

7/10

Sd (M) 7/10

S Bel 15/51

15/57

21

No. 914 of 1954.
Office of the Dist. Govt. Pleader,
Belgaum. Dated:- 13-10-54.

To

The Remembrancer of Legal Affairs, Bombay.

Subject:- Civil Appeal No. 437/53. (C.S.481/51).
1. Chidambar Ramchandra Deshpande & others..Appellants
Vs.
1. The State of Bombay..Respdt.

Sir,

I have the honour to state that the above mentioned appellants have filed an appeal mentioned above. You are therefore, requested to ~~obtain~~ move Government forsanction for the defence of the appeal. An uncertified copy of the appeal memo is attached herewith.

Yours faithfully,

Dist. Govt. Pleader, Belgaum.

Copy F.w.Cs to the Collector, Belgaum along with a copy of appeal memo.

30019
18/10/54
E

40

Submitted

Sanction may
be accorded for
the defence ..2
in appeal

19/10

Sd (M.L.) Lin
19-10-04

Civil Appeal No. 437/53.

In the Court of the District Judge, Belgaum.

1. Chidambar Ramachandra Deshpande of Belgaum.
2. Annaji Narsinha Deshpande, of Do. — Appellants. (Orig.Plffs)
3. Narayan Devrao Deshpande, of do.

Against.

1. The State of Bombay.
2. Madhav Harihar Deshpande of Shahapur, Near Belgaum. — Respondents. (Orig.Defts.)

Claim for Court fees Rs 1498-1-0.

" for Jurisdiction 2500/-.

The above-named appellants beg to appeal from the decree signed by the Joint Civil Judge, S.D., Belgaum, in O.S.No.481/51 on 21-10-53 and set forth the following grounds of objection to the decree appealed from, namely :-

1. The decision of the lower Court is contrary to law and the weight of evidence in the case.

2. The lower Court erred in holding that the plaintiffs Nos.1 and 2 did not prove their title to the suit property.

3. It was a mistake to hold that the Defendant No.2 proved that the decree in O.S.No. 294 of 1880 and O.S.No.1 of 1281 extinguished the title of the ancestors of the plaintiffs 1 and 2, to the suit property.

4. The lower Court erred in holding that Ex. 72 was admissible in evidence and could legally and effectively extinguish any subsisting title and transfer it to anybody in view of the provisions of the stamp Act and Registration Act.

5. It was wrong to hold that the plaintiffs had given any admission regarding Ex. 72 and the transfer purported to be effected by Ex. 72.

6. Assuming such an admission, it would not bind the plaintiff, as it was on a point of law. The so-called admission should have been ignored by the Court.

7. The lower Court overlooked the crucial point in the case, that after the satisfaction of the relevant mortgages, the

possessory mortgagee or anybody getting into possession through the possessory mortgagee was bound in law to surrender possession of the mortgaged lands to the mortgagors or their heirs.

8. Assuming that there was any legal and effective exchange as evidenced by Ex. 72, the defendant No.2 or his predecessor, having wilfully destroyed the relevant consideration for the exchange, could not resist the plaintiff's claim to the original, that is, the suit properties.

9. There is neither equity nor law on the side of the defendants.

10. The lower Court erred in holding that the plaintiff's claim was barred by any law of limitation. It was overlooked that admittedly the original possessory mortgagee was in possession of the property, though constructively through his tenant, within the requisite period of time from the refusal on the part of defendant No.1.

11. The evidence, circumstances and probabilities in the case have not been fully and properly considered and weighed by the lower Court.

On these among other grounds, the appellants pray that the decree of the lower Court be reversed, and that the plaintiffs' suit be decreed with costs throughout.

The address of the Respondents in appeal is the same as in suit.

The claim of mesne profits in appeal has been reduced to a claim of mesne profits for only three years prior to suit.

Belgaum.

14th November 1953. Sd/- V.D.Belvi. Pleader.

25-A-2

Suits:
Belgaum.
For possession of suit property with past and present future mesne profits.

GOVERNMENT OF BOMBAY.
Legal Department,
Resolution No. 2488/E
Bombay Castle, 3rd November 1954.

Read G.R.,L.D. No.13834, dated the 28th August 1951.

Letter from the District Government Pleader, Belgaum No.710 dated the 3rd October 1953, stating that the suit noted in the margin was decided by the Civil Judge (Senior Division), Belgaum on the 30th September 1953 when the following orders was passed:-

In the Court of the Civil Judge (Senior Division), Belgaum. Civil Suit No.33 of 1949. New civil suit No 481 of 1951 Shri C.R. Deshpande and two others. ... ... Plaintiffs. vs. The State of Bombay and others. ... ... Defendants.	No.710 dated the 3rd October 1953, stating that the suit noted in the margin was decided by the Civil Judge (Senior Division), Belgaum

"Suit is dismissed. Plaintiff do pay costs of the suit to defendants Nos. 1 and 2 in separate sets and do bear their own costs of the suit.

Letter from the District Government Pleader, Belgaum No. 914, dated the 13th October 1954 stating that the plaintiff in the suit noted in the margin has filed an appeal No.437 of 1953 and requesting sanction to its defence.

RESOLUTION: (1) The result of the suit is recorded.

(2) Sanction is accorded to the defence of the appeal No.437 of 1953 in the Court of District Judge, Belgaum on the lines of the brief accompanying Government Resolution, Legal Department, No.13834 dated the 28th August 1951 and the favourable grounds contained in the judgment of the Civil Judge (Senior Division), Belgaum dated the 30th September 1953.

By order and in the name of the
Governor of Bombay,

original R.T. Katarki
(R.T. Katarki),
Deputy Secretary to Government.

To
The Revenue Department,
The Collector of Belgaum,
The District Government Pleader, Belgaum with a request to forward an undertified copy of the judgment.

RMS.
1.11.

Issued
3/11

Submitted for orders
Nb
2/11
SSC 2/11

DS (Civil)

file ui S. Bel. 15/57

B/11

SS 3/11

S. Bel 15/51

14/11/54

15/57

277,

No. 54 of 1955.
Office of the Dist.Govt.Pleader,
Belgaum. Dated:- 13-1-55.

To

The Remembrancer of Legal Affairs, Bombay.

Subject:- Civil Appeal No.437/53.
1. Chidambar Ramchandra Deshpande ..Appellant.
Vs.
1. State of Bombay .. Respondent.

Sir,

The above mentioned appeal has been dismissed with costs on 31-12-1954.

Yours faithfully,

Dist.Govt.Pleader, Belgaum.

Copy F.W.Cs to the Collector, Belgaum for information.

SHD.

1621.
15/1/55 E

Office of the R.L.A. 29/5

Attention of the Revenue Department is invited to this office U.R. No. 29574/E dated the 30th December 1954 and that Department is requested to return Legal Department papers immediately.

for Remembrancer of Legal Affairs.

U.R. to R.D.No., 1312/E dated the 18th January 1955.

BD/17.1

7/12/50

Now act return of p/s. from RD

✓
19/1

SS

/ LD

RI no 2046 of 20.1.55

LD file no S. Bel. 15/51 may be retained & RD p/s. may be returned to client dept. RD may be informed that CA no 437/53 has been dismissed with costs on 31.12.54

sd(HG) SO MMN
20/1

S.F.I 15/1

21/1/55

U.R to RD no 1624/E

File in S. Bel. 15/51

SS 22/1

24/1

21/1

21/1